

HELLRING LINDEMAN GOLDSTEIN & SIEGAL LLP
Stephen L. Dreyfuss
Robert B. Rosen
Attorneys for Plaintiff
One Gateway Center
Newark, New Jersey 07102-5386
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UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

-----x Civil Action No.
D'ARTAGNAN TRADEMARKS, LLC, :

Plaintiff, :

v. :

THE SAUL ZAENTZ COMPANY, : COMPLAINT FOR
DECLARATORY RELIEF
AND DEMAND FOR JURY TRIAL
:
Defendant.
-----x

Plaintiff D'Artagnan Trademarks, LLC ("Plaintiff" or "DT"), through its attorneys Hellring Lindeman Goldstein & Siegal LLP, for its Complaint against Defendant The Saul Zaentz Company ("Defendant" or "SZC"), alleges as follows:

NATURE OF THE ACTION

1. This is an action for a declaratory judgment under 28 U.S.C. § 2201. Plaintiff seeks a declaration from this Court that its use of the trademark ROHAN in connection with the sale of poultry for human consumption, specifically duck, does not infringe the Defendant's alleged rights to the word "Rohan," which, among other things, is a fictional realm in the J.R.R. Tolkien trilogy of books known as The Lord Of The Rings (the

"LOTR Books"). In particular, Plaintiff seeks a declaration that its use of the ROHAN trademark in connection with the sale of poultry, through its affiliate D'Artagnan, Inc. ("D'Artagnan"), does not violate any rights SZC may have under the Lanham Act, 15 U.S.C. §§ 1114 and 1125(a), state unfair competition laws, or common law.

PARTIES

2. DT is a limited liability company organized under the laws of the State of New Jersey, with its principal place of business at 280 Wilson Avenue, Newark, New Jersey 07105.

3. Upon information and belief, SZC is a Delaware corporation with its principal place of business at 2600 Tenth Street, Berkeley, California 94710.

JURISDICTION AND VENUE

4. The Court has original jurisdiction over Plaintiff's federal claims pursuant to 28 U.S.C. §§ 1331, 1338, 2201 and 2202.

5. The Court has supplemental jurisdiction over Plaintiff's non-federal claims pursuant to 28 U.S.C. § 1367, because those claims are so related to the federal claims that they form a part of the same case or controversy under Article III of the United States Constitution.

6. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b).

FACTS COMMON TO ALL CLAIMS FOR RELIEF

7. DT is the owner of the trademarks used by its affiliate, D'Artagnan, in connection with the sale of D'Artagnan's food products. D'Artagnan is one of the United States' leading purveyors of foie gras, truffles, patés, sausages, smoked delicacies and organic game and poultry, providing more than 300 products to the world's top restaurants and hotels, and to retailers and distributors throughout the United States.

8. DT's and D'Artagnan's principal is Ariane Daguin, a native of France who is renowned for the production and distribution of fine French foods.

9. On December 23, 2011, DT filed an application with the United States Patent and Trademark Office ("PTO") to register the trademark ROHAN in connection with the sale of poultry, namely duck. The application was filed as an intent-to-use application, Serial No. 85/503315.

10. DT and D'Artagnan chose the name ROHAN to be the brand name for a particular type of duck to be sold by D'Artagnan. ROHAN is a variation on the word "Rouen" (Normandy's principal city); Rouen duck is a kind of duck raised in the Normandy region of France. In addition, Rohan was the name of a family of dukes and princes who lived centuries ago near Rouen. The ROHAN brand of duck is different from the Rouen duck, but

shares certain of its features. DT's intent was to use a name that would be reminiscent of, but different from, the Rouen duck.

11. DT, through its affiliate D'Artagnan, began use of the ROHAN trademark in connection with the sale of duck at least as early as January 31, 2012, and its use has continued since that date.

12. The PTO approved DT's application to register ROHAN, and on March 27, 2012 it published the trademark for opposition.

13. During the application process, the PTO did not cite any of SZC's trademark applications or registrations as obstacles to the registration of ROHAN by DT.

14. On April 26, 2012, SZC filed Opposition No. 91204921 (the "Opposition") to DT's registration of ROHAN. The Opposition is based on SZC's contention that, among other things, the term ROHAN, when applied to ducks, is likely to confuse consumers into believing that the ducks are sold by or connected to SZC, or that DT is connected or affiliated with SZC, or licensed or sponsored by SZC.

15. SZC alleges in the Opposition that it holds the right, title and interest in and to certain trademarks derived from the LOTR Books.

16. Upon information and belief, among the trademarks derived from the LOTR Books that allegedly are used by SZC or its

licensees are ROHAN, RIDERS OF ROHAN, and ROHAN NUTRITION (with the design of a horse's head).

17. In the LOTR Books, Rohan is a fictional realm in the fantasy world of Middle-Earth that is inhabited by the Rohirrim, a people of herdsman and farmers who are said to be well known for their horses and cavalry.

18. In the LOTR Books, the name "Rohan" is not associated with poultry, nor are any ducks referred to as "Rohan ducks."

19. Upon information and belief, neither SZC nor its licensees have used any trademark containing the word "Rohan" in connection with the sale of poultry or any other food for human consumption. Instead, upon information and belief, SZC and its licensees have used the mark ROHAN in the United States only in connection with horse feed and have used the mark RIDERS OF ROHAN only in connection with plastic figurines and playing pieces in the nature of miniature action figures for use with fantasy games, and entertainment services relating to computer games.

20. In fact, SZC owns federal registrations for trademarks containing the word "Rohan" only in connection with horse feed, plastic figurines and game playing pieces and computer games:

<u>Mark</u>	<u>Registration No.</u>	<u>Goods</u>
ROHAN	3,423,636	feed supplements for horses; animal feed for horses

RIDERS OF ROHAN	4,041,470	figures of plastic; playing pieces in the nature of miniature action figures for use with table top hobby battle games in the nature of battle, war and skirmish games and fantasy games
RIDERS OF ROHAN	3,948,338	entertainment services, namely providing a website featuring information about computer games; providing information, commentary and articles about video games and computer games, all online via a global computer network
ROHAN NUTRITION (with horse head design)	3,561,855	feed supplements for horses; animal feed for horses

Copies of TESS Reports reflecting these registrations are attached as Exhibit 1.

21. Despite the fact that it has never used the trademark ROHAN in connection with the sale of food for human consumption, SZC filed the Opposition to DT's application to register the ROHAN trademark in connection with sale of poultry, namely duck, and sent a communication dated September 7, 2012 to DT through counsel demanding that DT "cease use of SZC's ROHAN trademark, which is uniquely associated with its LORD OF THE RINGS properties." A copy of this communication is attached as Exhibit 2.

22. At no time since at least as early as January 31, 2012, when DT and D'Artagnan first began use of the ROHAN trademark in connection with poultry, have there been any instances of actual confusion between DT's ROHAN mark and any of SZC's trademarks, including those containing the word "Rohan." In fact, no one has ever expressed any belief that D'Artagnan's ROHAN brand duck is associated with the fictional realm Rohan or that the ROHAN brand duck is related to or associated with the LOTR Books or SZC.

23. SZC's September 7, 2012 communication to DT and the Opposition filed by SZC in the PTO give rise to a reasonable apprehension of imminent legal action by SZC relating to DT's continued use of the ROHAN trademark.

24. SZC's threats have interfered with DT's and D'Artagnan's rights in the ROHAN trademark and their ability to market and sell poultry using that mark.

COUNT I

DECLARATION OF NON-INFRINGEMENT UNDER THE LANHAM ACT

25. Plaintiff repeats and realleges each and every allegation in paragraphs 1 through 24 above as if fully set forth herein.

26. A justiciable and actual controversy exists before this Court with respect to whether Plaintiff's continued use of the ROHAN trademark infringes any of Defendant's alleged rights under the Lanham Act.

27. Plaintiff's continued use of the trademark ROHAN, through its affiliate D'Artagnan, is not likely to cause confusion as to the source or sponsorship of D'Artagnan's products or of any products sold by Defendant or its licensees under the ROHAN name, and does not constitute trademark infringement under the Lanham Act.

28. Defendant does not have exclusive trademark rights in the word "Rohan," and has no rights in any marks containing the word "Rohan" except in connection with horse feed, plastic figurines or action figures and computer games.

29. Without a prompt determination that Plaintiff's use of ROHAN does not infringe upon Defendant's claimed intellectual property rights, Plaintiff cannot know with any certainty whether it is exposing itself to liability if it does not accede to Defendant's demand.

30. Pursuant to 28 U.S.C. § 2201, Plaintiff is entitled to the issuance of a declaratory judgment declaring that it has the right to use the mark ROHAN in connection with the sale of poultry and that such use does not constitute federal trademark infringement pursuant to 28 U.S.C. § 1114.

COUNT II

DECLARATION OF NO FALSE ORIGIN UNDER THE LANHAM ACT

31. Plaintiff repeats and realleges each and every allegation in paragraphs 1 through 30 above as if fully set forth herein.

32. A justiciable and actual controversy exists before this Court with respect to whether Plaintiff's continued use of the ROHAN trademark infringes any of Defendant's alleged rights under 15 U.S.C. § 1125(a).

33. Plaintiff's continued use of the ROHAN trademark, through its affiliate D'Artagnan, is not likely to cause confusion as to source or sponsorship and does not constitute a false designation of origin under 15 U.S.C. § 1125(a).

34. Pursuant to 28 U.S.C. § 2201, Plaintiff is entitled to the issuance of a declaratory judgment declaring that it has the right to use the mark ROHAN in connection with the sale of poultry and that such use does not constitute unfair competition or false designation of origin pursuant to 28 U.S.C. § 1125(a).

COUNT III

DECLARATION OF NO UNFAIR COMPETITION UNDER STATE OR COMMON LAW

35. Plaintiff repeats and realleges each and every allegation in paragraphs 1 through 34 above as fully set forth herein.

36. A justiciable and actual controversy exists before this Court with respect to whether Plaintiff's continued use of the ROHAN trademark constitutes unfair competition under state or common law.

37. Plaintiff's continued use of the trademark ROHAN is not likely to cause confusion as to the source or sponsorship

of its products and does not constitute unfair competition under state or common law.

38. Pursuant to 28 U.S.C. § 2201, Plaintiff is entitled to the issuance of a declaratory judgment declaring that it has the right to use the mark ROHAN in connection with the sale of poultry and that such use does not constitute unfair competition under state or common law.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that the Court enter judgment as follows:

A. Declaring that Plaintiff's continued use of ROHAN does not constitute:

- (1) Trademark infringement under 15 U.S.C. § 1114;
- (2) Unfair competition or false designation of origin under 15 U.S.C. § 1125(a); or
- (3) Unfair competition under state or common law;

B. Declaring that any rights that Defendant may have in connection with the mark ROHAN are limited to horse feed, plastic figurines or action figures, and computer games;

C. Awarding Plaintiff its attorneys' fees, expenses and costs incurred in this action; and

D. Awarding Plaintiff such further relief as the Court deems just and proper.

HELLRING LINDEMAN GOLDSTEIN & SIEGAL LLP
Attorneys for Plaintiff

By: s/Robert B. Rosen
ROBERT B. ROSEN
A Member of the Firm

Dated: September 13, 2012

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury of all issues
so triable.

HELLRING LINDEMAN GOLDSTEIN & SIEGAL LLP
Attorneys for Plaintiff

By: s/Robert B. Rosen
ROBERT B. ROSEN
A Member of the Firm

Dated: September 13, 2012

CERTIFICATION PURSUANT TO L.CIV.R. 11.2

ROBERT B. ROSEN, of full age, hereby certifies as follows:

1. I am a member of the firm of Hellring Lindeman Goldstein & Siegal LLP, attorneys for plaintiff.

2. To the best of my knowledge, there is no other action pending in any court or any pending arbitration of which the matter in controversy herein is the subject and no such action or arbitration proceeding is contemplated, other than the opposition proceeding filed by the defendant in the United States Patent and Trademark Office, Opposition No. 91204921.

s/Robert B. Rosen
ROBERT B. ROSEN

Dated: September 13, 2012

EXHIBIT 1



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Rohan

Word Mark	ROHAN
Goods and Services	IC 005. US 006 018 044 046 051 052. G & S: Feed supplements for horses. FIRST USE: 20080101. FIRST USE IN COMMERCE: 20080101
	IC 031. US 001 046. G & S: Animal feed for horses. FIRST USE: 20080101. FIRST USE IN COMMERCE: 20080101
Standard Characters Claimed	
Mark Drawing Code	(4) STANDARD CHARACTER MARK
Serial Number	77065820
Filing Date	December 16, 2006
Current Basis	1A
Original Filing Basis	1B
Published for Opposition	September 4, 2007
Registration Number	3423636
Registration Date	May 6, 2008
Owner	(REGISTRANT) Elordi Patricia INDIVIDUAL ARGENTINA 1345 Cabrillo Park Dr #R3 Santa Ana CALIFORNIA 92701
	(LAST LISTED OWNER) THE SAUL ZAENTZ COMPANY CORPORATION DELAWARE 2600 TENTH STREET BERKELEY CALIFORNIA 94710

Assignment Recorded ASSIGNMENT RECORDED
Attorney of Record Jeffrey M. Furr
Type of Mark TRADEMARK
Register PRINCIPAL
Live/Dead Indicator LIVE

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RIDERS OF ROHAN

Word Mark	RIDERS OF ROHAN
Goods and Services	IC 020. US 002 013 022 025 032 050. G & S: figures of plastic. FIRST USE: 20021100. FIRST USE IN COMMERCE: 20021100
	IC 028. US 022 023 038 050. G & S: playing pieces in the nature of miniature action figures for use with table top hobby battle games in the nature of battle, war and skirmish games and fantasy games. FIRST USE: 20021100. FIRST USE IN COMMERCE: 20021100
Standard Characters Claimed	
Mark Drawing Code	(4) STANDARD CHARACTER MARK
Serial Number	85265942
Filing Date	March 14, 2011
Current Basis	1A
Original Filing Basis	1A
Published for Opposition	August 2, 2011
Registration Number	4041470
Registration Date	October 18, 2011
Owner	(REGISTRANT) The Saul Zaentz Company CORPORATION DELAWARE 2600 Tenth Street

Berkeley CALIFORNIA 94710
Attorney of Record Michael A. Grow
Prior Registrations 3948338
Type of Mark TRADEMARK
Register PRINCIPAL
Live/Dead Indicator LIVE

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RIDERS OF ROHAN

Word Mark	RIDERS OF ROHAN
Goods and Services	IC 041. US 100 101 107. G & S: entertainment services, namely, providing a website featuring information about computer games; providing information, commentary and articles about video games and computer games, all online via a global computer network. FIRST USE: 20070424. FIRST USE IN COMMERCE: 20070424
Standard Characters Claimed	
Mark Drawing Code	(4) STANDARD CHARACTER MARK
Serial Number	77695820
Filing Date	March 20, 2009
Current Basis	1A
Original Filing Basis	1B
Published for Opposition	July 7, 2009
Registration Number	3948338
Registration Date	April 19, 2011
Owner	(REGISTRANT) The Saul Zaentz Company CORPORATION DELAWARE 2600 Tenth Street Berkeley CALIFORNIA 94710

Attorney of Record Michael A. Grow
Type of Mark SERVICE MARK
Register PRINCIPAL
Live/Dead Indicator LIVE

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Word Mark	ROHAN NUTRITION
Goods and Services	IC 005. US 006 018 044 046 051 052. G & S: Feed supplements for horses. FIRST USE: 20080101. FIRST USE IN COMMERCE: 20080101
	IC 031. US 001 046. G & S: Animal feed for horses. FIRST USE: 20080101. FIRST USE IN COMMERCE: 20080101
Mark Drawing Code	(3) DESIGN PLUS WORDS, LETTERS, AND/OR NUMBERS
Design Search Code	03.05.01 - Horses 03.05.16 - Heads of horses, donkeys, zebras 03.05.24 - Stylized horses, donkeys, zebras 26.17.02 - Bands, wavy; Bars, wavy; Lines, wavy; Wavy line(s), band(s) or bar(s)
Trademark Search Facility Classification Code	ANI-MAMM Mammalia; accurate depiction of warm-blooded animals except for human beings INAN Inanimate objects such as lighting, clouds, footprints, atomic configurations, snowflakes, rainbows, flames SHAPES-BAR-BANDS Designs with bar, bands or lines SHAPES-COLORS-2 Design listing or lined for two colors
Serial Number	77182499
Filing Date	May 16, 2007
Current Basis	1A
Original Filing Basis	1B
Published for	November 20, 2007

Opposition

Registration Number 3561855

Registration Date January 13, 2009

Owner (REGISTRANT) Elordi, Patricia INDIVIDUAL UNITED STATES 1345 Cabrillo Park Dr #R3 Santa Ana CALIFORNIA 92701

(LAST LISTED OWNER) THE SAUL ZAENTZ COMPANY CORPORATION DELAWARE 2600 TENTH STREET BERKELEY CALIFORNIA 94710

Assignment Recorded ASSIGNMENT RECORDED

Attorney of Record Jeffrey M. Furr

Disclaimer NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "NUTRITION" APART FROM THE MARK AS SHOWN

Description of Mark The color(s) green and brown is/are claimed as a feature of the mark. The mark consists of the color green appearing as shading for the wording "NUTRITION" and in the design as shading for the wavy band appearing above the wording "NUTRITION". The color brown appears as shading for the wording "ROHAN" and in the design as outlining for the stylized head of a horse. The color white is not claimed as a feature of the mark.

Type of Mark TRADEMARK

Register PRINCIPAL

Live/Dead Indicator LIVE

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EXHIBIT 2

Robert B. Rosen

From: Cohen, Elizabeth [Cohen.Elizabeth@ARENTFOX.COM]
Sent: Friday, September 07, 2012 3:04 PM
To: Robert B. Rosen
Cc: Grow, Michael A.
Subject: SZC v. D'Artagnan

Dear Bob:

The client has further considered the possible license to your client to use ROHAN on duck, and has concluded that it is not interested in doing so at this time. Instead, SZC requests that your client cease use of SZC's ROHAN trademark, which is uniquely associated with its LORD OF THE RINGS properties. SZC would be willing to provide a reasonable phase out period to transition to a new name.

Please let me know if you are client is willing to phase out the name. I look forward to hearing from you.

Regards,

Elizabeth

Elizabeth H. Cohen
Partner

Arent Fox LLP | Attorneys at Law
1050 Connecticut Avenue, NW
Washington, DC 20036-5339
202.857.6166 DIRECT | 202.857.6395 FAX
cohen.elizabeth@arentfox.com | www.arentfox.com

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9/13/2012